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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2011-97**

12 **PENNY LEE PENCE**
13 **3920 Ingraham St., 11-109**
14 **San Diego, CA 92109**

A C C U S A T I O N

15 **Registered Nurse License No. 376479**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 31, 1984, the Board of Registered Nursing issued Registered
24 Nurse License Number 376479 to Penny Lee Pence (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 April 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

5 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
6 'registration.'"

7 "9. Section 2761 of the Code states:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11 "....

12 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be
14 conclusive evidence thereof.

15 "...."

16 10. Section 2762 of the Code states:

17 "In addition to other acts constituting unprofessional conduct within the meaning of this
18 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
19 chapter to do any of the following:

20 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
21 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
22 administer to another, any controlled substance as defined in Division 10 (commencing with
23 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
24 defined in Section 4022.

25 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
26 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
27 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
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1 himself or herself, any other person, or the public or to the extent that such use impairs his or her
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
5 or the possession of, or falsification of a record pertaining to, the substances described in
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
7 thereof.

8 "...."

9 11. Section 2765 of the Code states:

10 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
11 charge substantially related to the qualifications, functions and duties of a registered nurse is
12 deemed to be a conviction within the meaning of this article. The board may order the license or
13 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
14 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
15 order granting probation is made suspending the imposition of sentence, irrespective of a
16 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
17 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
18 of guilty, or dismissing the accusation, information or indictment."

19 REGULATIONS

20 12. California Code of Regulations, title 16, section 1444, states:

21 "A conviction or act shall be considered to be substantially related to the qualifications,
22 functions or duties of a registered nurse if to a substantial degree it evidences the present or
23 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
24 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

25 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
26 subdivision (d) of Penal Code Section 11160.

27 "(b) Failure to comply with any mandatory reporting requirements.

28 "(c) Theft, dishonesty, fraud, or deceit.

1 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
2 Penal Code.”

3 13. California Code of Regulations, title 16, section 1445 states:

4 “....

5 “(b) When considering the suspension or revocation of a license on the grounds that a
6 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such
7 person and his/her eligibility for a license will consider the following criteria:

8 “(1) Nature and severity of the act(s) or offense(s).

9 “(2) Total criminal record.

10 “(3) The time that has elapsed since commission of the act(s) or offense(s).

11 “(4) Whether the licensee has complied with any terms of parole, probation, restitution or
12 any other sanctions lawfully imposed against the licensee.

13 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
14 Penal Code.

15 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

16 **COST RECOVERY**

17 14. Section 125.3 of the Code provides that the Board may request the administrative law
18 judge to direct a licensee found to have committed a violation or violations of the licensing act to
19 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(December 12, 2006, Conviction for DUI on June 20, 2006)**

22 15. Respondent is subject to disciplinary action under Code sections 490 and 2761,
23 subdivision (f), on the grounds that she was convicted of a crime that is substantially related to
24 her qualifications, functions and duties as a registered nurse. The circumstances are as follows:

25 a. On December 12, 2006, in a criminal case entitled *The People of the State of*
26 *California v. Penny Lee Pence*, Santa Barbara Superior Court, Figueroa Division case number
27 1212345, Respondent was charged with violating Vehicle Code section 23153, subdivision (a),
28 driving under the influence of alcohol and causing bodily injury and Vehicle Code section 23153,

1 subdivision (b), driving while having .08 percent and more, by weight, of alcohol in her blood
2 and causing bodily injury. As a result of a plea bargain, Respondent was convicted by her plea of
3 no contest to violating Vehicle Code section 23152, subdivision (a), driving under the influence
4 of alcohol, and the other charges were dismissed.

5 b. The facts that led to this conviction are that on June 20, 2006, at 2130 hours,
6 Respondent caused a head-on collision at Loma Alta Drive between Cliff Drive and Shoreline
7 Drive in the city of Santa Barbara, California. The male driver of a black Jeep Cherokee had
8 been traveling northbound on Loma Alta Drive and was signaling to make a left hand turn into a
9 driveway in the 100 block when he observed Respondent traveling southbound on Loma Alta
10 Drive down the middle of the roadway directly towards him. Respondent's vehicle collided head-
11 on with his vehicle forcing him off the side of the road. Respondent's vehicle did not have
12 headlights on and it was dark. Respondent apologized for the collision to the other driver and
13 acknowledged she had been drinking alcohol. An officer contacted Respondent who was leaning
14 against the side of her vehicle. Respondent stated that she had been driving from the Cliff Room
15 bar to her residence prior to the collision and that she had mistakenly driven past her residence
16 and, therefore, made a right turn onto Loma Alta Drive in order to subsequently turn around and
17 go back westbound onto Cliff Drive to return to her residence. Respondent said she collided with
18 another vehicle that was headed in the opposite direction however, she was unsure how the
19 collision occurred. The officer noticed a strong odor of alcohol on Respondent's breath and she
20 stated that she had consumed too many beers. The officer completed the standard DUI field
21 interview of Respondent when she began to complain of severe back pain, and she had a visible
22 seatbelt abrasion injury across the front of her neck. The other driver sustained a minor neck
23 injury and complained of neck pain as a result of the collision. Respondent was arrested for
24 felony DUI with injury, and no proof of vehicle insurance. Due to the fact that Respondent
25 required medical treatment, she was not handcuffed and paramedics transported her to the
26 hospital, where a blood test was administered revealing Respondent's blood alcohol content
27 .23 percent by weight.

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1 c. As a result of the conviction, Respondent was sentenced to 3 years of supervised
2 probation, 180 days in Santa Barbara County Jail, suspended for 3 years, ordered to serve 30 days
3 in Santa Barbara County Jail, not to drive during DMV suspension, complete a 9 month first
4 offender program, pay various fines and fees, pay restitution in an amount to be determined by
5 Probation and with probation to become unsupervised upon completion of restitution, not to drive
6 without a valid driver's license, registration or insurance, not to drive after drinking alcohol, obey
7 all laws, and complete six (6) Alcoholics Anonymous (AA) Meetings.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Using Alcohol to a Dangerous Extent)**

10 16. Respondent's license is subject to discipline under Code section 2762,
11 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as is
12 set forth in paragraph 15, above, which is incorporated by this reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Criminal Conviction Involving the Consumption of Alcohol)**

15 17. Respondent's license is subject to discipline under Code section 2762,
16 subdivision (c), in that Respondent was convicted of a criminal offense involving the
17 consumption of alcohol as is set forth in paragraph 15, above, which is incorporated by this
18 reference.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Registered Nursing issue a decision:

22 1. Revoking or suspending Registered Nurse License Number 376479, issued to
23 Penny Lee Pence;

24 2. Ordering Penny Lee Pence to pay the Board of Registered Nursing the reasonable
25 costs of the investigation and enforcement of this case, pursuant to Business and Professions
26 Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/16/10 for Louise Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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